

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** Town of Amherst, Department of Public Works  
586 South Pleasant Street, Amherst, MA 01002

**Date application filed with the Town Clerk:** March 31, 2008

**Nature of request:** To modify Condition #2 of Special Permit ZBA FY2006-00009 to include a wireless facility at the former landfill/current transfer station site.

**Address:** 740 Belchertown Road (Map 18D, Parcel 23, R-LD Zoning District)

**Legal notice:** Published April 30 and May 5, 2008 in the Daily Hampshire Gazette and sent to abutters on April 17, 2008

**Board members:** Thomas Simpson, Barbara Ford and Albert Woodhull

**Submissions:** The petitioner submitted the following:

- A Narrative of the proposed modification;
- A site plan showing the 56.16 acres of the former landfill, 2 acres of the current transfer station, and the location of the proposed communications tower, drawn by Paul Dethier, DPW, dated 12/7/07;
- A site locus map, showing the proposed project site in relation to the surrounding area;
- A management plan of the entire landfill area;
- Photos of the transfer station entrance way and two photos of the proposed project location from different angles;
- Two photos of the sight lines from the two most vulnerable properties along Harkness Road that abut the landfill;
- A photo of east Amherst showing the one mile radius area around the proposed site, as required by the Zoning Bylaw, Section 3.340.2 of the Zoning Bylaw.

Omnipoint Communications, Inc. submitted a set of plans for the design of the proposed communications tower, drawn by Coler & Colantonio, dated 2/16/07, plus 10 photosimulated views of the proposed tower directly surrounding the landfill, mostly less than ¼ mile from the proposed tower, ¾ mile closer than that required of Section 3.3402.2j of the Zoning Bylaw.

The zoning assistant submitted memos concerning the current application dated 5/8/08, the Special Permit application for the transfer station dated 9/16/05, and a memo of a similar application for a communications tower on town-owned land in North Amherst, dated 3/3/06.

Two members of the public submitted an article from the internet titled "Town can reject cell phone towers" from Lawyers Weekly USA, dated 2/22/2001. They also submitted several other internet pieces related to health and property value issues that are filed under the Omnipoint Special Permit FY2008-00026 decision.

**Site Visit:** April 24 and May 2, 2008

The Board met with Guilford Mooring, Superintendent of Public Works, Paul Dethier, Landscape Architect from the Town Engineering Department and Mike Heartel, photographer from Omnipoint, Inc. The first site visit was too windy for the traditional balloon test to show the height of the tower. The balloon test was possible at the second site visit. The Board observed the following at the site visits:

- A large 62 acre site, formerly the Amherst landfill, now currently used as the Amherst Transfer station;
- The border of evergreens along all sides of the landfill and the 125-foot high sections or cells of the landfill that shield much of the activity on site;
- The depressed area next to the cell closest to Belchertown Road where the communication tower is proposed;
- The access roads to the proposed tower location that are part of the transfer station operations, the main public road from Belchertown Road and the private DPW gravel road behind the transfer station to the tower location.
- The screening of the tower location by the landfill cells and the evergreens, plus the 15-25 foot lower elevation of the tower location from Belchertown Road and the rest of the landfill site.

**Public Hearing:** May 15, 2008

Prior to taking testimony, the Chair of the Zoning Board of Appeals, Mr. Simpson, stated that he had talked with Town Counsel, Joel Bard, about the legal issues in permitting communication towers within the Town. Mr. Bard had re-affirmed the Federal Communications Commission's (FCC) requirement that a permit for a cell tower must be issued if the applicant demonstrates a lack in service at the proposed location. If coverage is interrupted in the area under consideration for Omnipoint (T-Mobile), then the ZBA must issue a permit for the communications tower.

Having said that, Mr. Simpson stated that the Board will take the public's concern under consideration, but the law does state that cell phone companies do have the right to erect a tower or co-locate on an existing structure in order to guarantee continuous service in the area.

Guildford Mooring, Superintendent of Public Works for Amherst, spoke to the application at the hearing. He said that the Town would like to modify Condition #2 of Special Permit ZBA FY2006-00009 in order to allow a wireless communications facility on the property. The property has been used as a landfill and currently is a transfer station/recycling center for Amherst. In addition to a transfer station and recycling center, Condition #2 allows for a material storage area for granite curb, sand, gravel, bricks, etc., and dumping of snow in the winter.

Mr. Mooring gave the following information:

- The Town would like to lease a 50' x 50' section of the landfill area to Omnipoint, Inc (T-Mobile) so that the company can build a wireless communication facility;
- No new access will be needed; Omnipoint can use the main entrance road plus the current gravel roadways in the back of recycling area;
- The gate at the main entrance is locked when the transfer station is not open; both Omnipoint and the DPW will have a key to access the site;
- The hours of operation for the transfer station are Tuesday, Thursday and Saturday from 7 a.m. to 3 p.m.;
- The tower is proposed to be 150 feet high, and will be located 150 feet from Belchertown Road; it will also be more than 500 feet from Logtown Road;
- The Town will be able to use the proposed tower; there will be three positions on the tower reserved

for the Town, plus there will be locker space for the Town in the fenced Omnipoint space;

- The Town and Omnipoint will share the top platform at 150 feet;
- Other wireless companies will be able to co-locate at lower elevations, spaced apart at 10-foot intervals;
- The Town's radio frequencies can be picked up by receivers at the UMass library, the DPW building and the Notch;
- The Town's use will be for emergency frequencies and by the police, fire, DPW, and state preparedness;
- Verizon had a communication lapse at the Ruxton site on Pulpit Hill Road and created a communications tower on which T-Mobile can co-locate to cover their lapse in North Amherst;
- T-Mobile has other service lapses and looked at Town-owned property at the waste water treatment plant, the water towers along East Pleasant Street and Village Park, the water tower on Bay Road, the middle school, and the proposed site;
- T-Mobile choose the current landfill/transfer station site as the best for their current needs;
- The DEP will not allow the old landfill to be considered because it is still settling and is undergoing a Comprehensive Site Assessment (CSA);
- No other sites are available to T-Mobile; UMass has denied additional use of their towers for communication facilities.

Several members of the public spoke to the petition.

- James Best, 186 Harkness Road, claimed that the proposed tower will be visible from his back yard and that abutters should not be subjected to this. He said that it would be a visually offensive structure and violates Section 10.382 of the Zoning Bylaw;
- Elsie Fetterman, 148 Logtown Road, objected to the process for the permit application. She said that the tower will be in her back yard and is not suitably located in the neighborhood (Section 10.381 of the Zoning Bylaw). She said that she was informed about the first site visit but not the second one when the balloon was flown;
- Ben Zahradnik, 850 Belchertown Road, said that he has a cell phone and excellent reception (he did not say which company he uses). He said that law suits have denied cell towers in particular neighborhoods and handed the Board an article to that effect from the internet. He further claimed that it was not in the ZBA's purview to issue a Special Permit to T-Mobile.

Mr. Simpson responded that unfortunately neighborhood concerns have been trumped by the Federal Telecommunications Act in this case, giving communications companies the right to locate if they have insufficient coverage in the area. A local Zoning Bylaw can be superseded by State law, Federal law, farms, comprehensive permits and some environmental concerns; it is not ironclad. The 1966 FCC Act does supersede the Amherst Zoning Bylaw, Section 10.38, findings required of all Special Permits.

At this point, the Board agreed that the applicant for the communications tower, Omnipoint (T-Mobile) should give testimony for Special Permit application ZBA FY2008-00026 in order to clarify some information.

Mr. Simpson made a motion to table the hearing until later in the evening. Ms. Ford seconded the motion, and the vote was unanimous to table the hearing until later in the evening.

After hearing the Omnipoint application, the Board returned to this application the same evening.

How the gap in cell phone service for the eastern section of Amherst was discussed. Elijah Luutu, engineer

for Omnipoint said that weaknesses in the signal are determined two ways, by drive-by tests and by computer generation of the signal interacting with the environment, plus the demand for use.

Mr. Woodhull added that there is free software available on the internet to determine the strength of a signal in an area, dependent on the where transmitter is located and the geography of the surroundings.

Mr. Mooring said that the DPW has no problem with a communications tower at the proposed location. There is tree/shrub screening and fencing around the perimeter of the landfill, and the tower site will have an additional six-foot fence around it.

Mr. Mooring stated that if the Town co-locates on a tower built at the landfill/transfer station site, the DPW would be able to communicate from that area to the DPW building, to the bunker at the Notch and to the Ruxton site. This would significantly improve their communication and service to the Town. He also said that the DPW would install their own generator for back-up, and perhaps locate it in the DPW building.

Mr. Simpson made a motion to close the hearing. Mr. Woodhull seconded the motion, and the vote was unanimous to close the hearing.

#### **Public Meeting:**

Mr. Simpson asked the other members of the Board if the concept of the application would be positive to them; the Board agreed that the landfill/transfer station was an appropriate site for a communications tower.

Mr. Simpson suggested that the crafting of findings and conditions of the Special Permit should be held at a public meeting of the Board at a later time. Since the related Special Permit application by Omnipoint was continued to July 10<sup>th</sup>, it was agreed that findings and conditions of the DPW Special Permit application would be made at that time.

#### **Public Meeting                      July 10, 2008, Findings:**

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 -The proposal is suitably located on Town land previously used as the sanitary landfill and is now a transfer station/recycling center because the site is very large for a communications tower, over 56 acres, and will shield the tower in almost all directions.

10.382, 10.383 & 10.385 – The proposal does not constitute a nuisance due to air and water pollution, odor, dust or visually offensive structures and reasonably protects adjoining premises because the site is large, there is existing screening, and the communications tower will be 540 feet away from the nearest abutter, who lives to the west on Logtown Road. The three capped landfill cells do not emit offensive odors and are now grassed mounds. Buffer zones, screening and the large cells of the landfill constitute the bulk of the site. One of the conditions of the permit will be that the petitioner adds more vegetative screening to help protect the Logtown Road abutters from seeing the tower.

10.384 – Adequate and appropriate facilities will be provided for the proper operation of a communications facility. The plans that were submitted covered all aspects of the building and maintenance of the facility. The existing road will provide access to the tower compound.

10.386- The proposed communication facility will comply with sign and parking regulations. Small signs that are required by the FCC shall be associated with the communications facility, and the other signs identify the location for each of the transfer station collection sites. Additional parking was added since the 2003 Special Permit, and no additional parking will be needed for the communications tower.

10.387 & 10.388 – The proposal has not changed the pattern of movement within the site, or the access to the site. Adequate space exists for off-street loading and unloading of vehicles, materials and equipment

related to the operation of the transfer station, recycling activities and the proposed communications tower. Traffic for the communications facility will be minimal – one truck once per month for each carrier.

10.389 & 10.390 – The proposal provides adequate methods of disposal of waste and recyclables since this is a DEP-approved facility and is constantly inspected for proper procedures. The proposed communications tower will be subject to DEP approval as well.

10.392, 10.393 & 10.396 – The proposal provides adequate landscaping and provides protection of adjacent properties from intrusive lighting because the transfer station activities occur only three days per week, and are at least 300 feet away from the nearest abutters. A 50-foot buffer zone, fences and trees screen the property, and an additional screen of dirt berm will be added by the petitioner to reduce morning noise. Security lighting on the site is necessary, but its effect on the neighborhood has been reduced with cut-off luminaries, light shields, lowered height of light poles, and screening. A communications facility will not increase the lighting already on site.

10.397 – The proposal provides adequate open space, since most of the 56+ acres is open.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw, which is to promote the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst. In addition a wireless co-location by the Town on the communications tower will be beneficial to the Public Works Department and for the other service departments (police, fire, inspections) of the Town.

#### **Public Meeting – Zoning Board Decision**

Mr. Simpson made a motion to APPROVE the modification of Condition #2 of Special Permit FY2006-00009 to allow the Town to lease part of the landfill/transfer station site to a wireless communication facility, with conditions. Ms. Ford seconded the motion.

For all of the reasons stated above, the Board VOTED to modify Condition #2 of Special Permit FY2006-00009 to allow the Town to lease part of the landfill/transfer station site for a wireless communication facility on the premises at 740 Belchertown Road, (Map 18D, Parcel 23, R-LD Zoning District), as requested in the application filed by the Amherst Department of Public Works, with conditions

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THOMAS SIMPSON

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BARBARA FORD

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ALBERT WOODHULL

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2008 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2008.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2008  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2008,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit to the Town of Amherst, Department of Public Works, to modify Condition #2 of Special Permit FY2006-00009 to allow the Town to lease a part of the landfill/transfer station site for a wireless communication facility on the premises at 740 Belchertown Road, (Map 18D, Parcel 23, R-LD Zoning District) subject to the following conditions:

1. This Special Permit allows for the use of the site for a Waste Transfer Station and Recycling Center and a wireless communications facility. It supersedes all previous Special Permits for the site.
2. The site shall be used for the following:
  - a. Town of Amherst Municipal Solid Waste Transfer Station
  - b. Recycling Center
  - c. Material storage area for granite curb, sand, gravel, bricks, etc.
  - d. Snow dumping, to be used in accordance with MA Department of Environmental Protection (MDEP) requirements
  - e. A wireless communications facility.
3. Fencing along the borders and screening in the buffer zones shall be maintained in perpetuity. Additional evergreen trees shall be planted along the westerly border to help shield the communications tower from the residents of Logtown Road. A final landscape plan of that area shall be prepared and submitted for the review and approval of the Board at a public meeting.
4. The hours of operation for the Transfer Station and Recycling Center open to the public shall be three days a week, from 8 am to 2 pm.
5. The hours of operation for the Dept. Public Works (DPW) staff shall be 7 am to 3 pm, six days a week, except for emergencies.
6. The Town shall take all reasonable steps to develop and operate the Transfer Station and Recycling Center in a manner which minimizes negative visual impact.
7. A berm of earth shall be constructed on the westerly side of the site next to Logtown Road, to help decrease noise of the operations of the Transfer Station. Use of any machinery on site shall be limited to the hours of 7:30 am to 3 pm, except in emergencies.
8. Snow dumping outside of the normal DPW hours of operation shall occur at the site only when all other available sites for snow dumping have already been filled to capacity or when the volume of snow accumulating in Town is so large as to require the use of the site in addition to other sites.
9. Water supply and surface runoff monitoring in the immediate area of the site shall be continued in accordance with MDEP requirements. Records of such testing shall be public documents.
10. In addition to the implementation of best management practices regarding the appropriate handling, storage, and management of waste and recyclable materials, aggressive measures shall be undertaken by the Town to prevent any rodent, animal or pest problem from developing on the site.
11. Liquid waste sludge may be used in conjunction with a MDEP permitted activity as long as the material is stored in closed containers, transported on the site in a closed piping system and not applied directly to any surface of the site.

12. All refuse and paper for recycling must be covered daily. Specifically, refuse brought to the site shall be placed in a closed compactor box or open top roll-off which shall be covered daily and emptied as often as necessary in order to minimize noxious odors.
13. The transfer station shall be kept free from noxious odors. An active methane gas collection system shall be maintained for Cell 3.
14. Any compost pile shall be located as far as possible from adjacent residences in order to minimize noxious odors. The materials placed in the compost pile shall be those approved by MDEP regulations. No manure or significant amounts of fruits and vegetables shall be placed in the compost pile.
15. The metal recycling pile shall not be allowed to accumulate to a height that can be seen from the abutting properties on Logtown Road.
16. The Recycling Center area may be changed only with the approval of the MDEP or to facilitate a MDEP approved recycling or diversion policy or program. Any *di minimus* physical changes to the site shall be approved by the Building Commissioner prior to being implemented. All substantial changes to the site must be reviewed and approved by the Zoning Board of Appeals at a public hearing.
17. This permit will be reviewed at a public meeting of the Board in October, 2010, in order to determine whether the applicant needs to apply for another Special Permit for the continued operations of the Amherst Transfer Station and Recycling Center.

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THOMAS SIMPSON, Chair  
Amherst Zoning Board of Appeals

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DATE